IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14-09-2007

Coram :

The Hon'ble Mr. Justice F.M.IBRAHIM KALIFULLA
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.10723 of 2002

S.Parthasarathy ... Petitioner

vs.

1. Union of India
   Rep. by its Secretary
   Ministry of Railways,
   New Delhi.

2. The Chief Personnel Officer
   Southern Railways,
   Head Quarters Office,
   Chennai - 600 003.

3. The Deputy Chief Personnel Officer
   (Engineering).
   Southern Railways,
   Head Quarters Office,
   Chennai - 600 003.

4. Central Administrative Tribunal
   Rep. by Registrar,
   Madras Bench,
   High Court Campus,
   Chennai. ..Respondents

Writ Petition, seeking certiorarified mandamus is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records relating to the order of the Central Administrative Tribunal, Chennai in O.A.No.1214 of 1999, dated 21.11.2000 together with the Proceedings in No.PP(S) 608/IX/Cipher Operator, dated 24.11.1999 passed by the second respondent and quash the same and direct the second and third respondents to treat the post of Cipher Inspector as cadre post, enabling the petitioner to continue in the said post with all consequential benefits.

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For Petitioner : Mr.P.V.S.Giridharan

For Respondents : Mr.R.Vellaichamy for RR1 to 3

O R D E R

S.TAMILVANAN, J

This writ petition has been filed by the petitioner, aggrieved by the order dated 21.11.2000 made in O.A.No.1214 of 1999 by the Central Administrative Tribunal, Madras Bench, Chennai, dismissing the Original Application filed by the petitioner herein.

2. In the aforesaid Original Application, the petitioner herein had sought an order of the Tribunal to quash the Proceedings No.PP(S) 608/IX/Cipher Operator, dated 24.11.1999 passed by the second respondent and consequently to direct the second and third respondents to treat the post of Cipher Inspector as cadre post.

3. It is not in dispute that the petitioner herein was originally appointed as Clerk in the Southern Railways on 13.08.1995 in the Head Quarters Traffic Department and promoted as Senior Clerk with effect from 17.02.1982. According to the petitioner herein, he was subsequently selected and appointed to the post of Cipher Operator Gr.II, then promoted as Cipher Operator Gr.I and thereafter, promoted as Cipher Inspector, only after due process of selection in the year 1991 and in none of the said orders, relating to his promotion, it was specified that he has been promoted to an ex-cadre post. The petitioner has further stated that the Cipher organization is a duly constituted specialized unit, consisting of duly sanctioned permanent posts and hence, the finding of the Tribunal that the petitioner holding ex-cadre post is erroneous in law. Aggrieved by the order passed by the fourth respondent, this writ petition has been preferred by the petitioner herein.

4. According to the respondents 1 to 3, the petitioner herein was promoted as Cipher Operator Gr.II in the scale of Rs.1400-2300 on ex cadre basis with effect from 13.07.1987 in Signal and Telecommunication Department on his volunteering to the said post. He was also promoted subsequently as Cipher Operator / Gr.I in the scale of Rs.1600-2600 with effect from 13.07.1989 and then promoted as Cipher Inspector in the scale of Rs.1600-2660 + Rs.200 as special pay. It is seen that the second respondent herein issued a notification, dated 24.11.1999, treating the ex cadre posts available in crypto center / Headquarters / S&T Department as cadre post. As per the notification, volunteers from the employees working as Nucleus Cipher Operators / Inspectors were called for to fill up the post of Cipher Operator Gr.II in the scale of Rs.5000-8000.

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5. It is seen that the order of notification, dated 24.11.1999 by the second respondent reads as follows :

> " As envisaged in Railway Board's letter No.E(NG)I/88/PM8/5, dated 01.08.89, the following posts available in Crypto Centre / HQrs. /S&T/Dept. which were hitherto treated as ex-cadre and filled up a such, are now treated as cadre posts with immediate effect from the date of issue of this notification.
>
> | Sl.No | Category | Scale of pay | No.of posts |
> |---|---|---|---|
> | 1. | Cipher Inspector | Rs.6500-10500 | 1 |
> | 2. | Cipher Operator/Gr.I | Rs.5500-9000 | 1 |
> | 3. | Cipher Operator/Gr.II | Rs.5000-8000 | 1 |
>
> Consequent on the encadering of these posts, it is proposed to fill up the vacancies of Cipher Operator in scale of Rs.5000-8000 by calling for volunteers from the existing employees working as Nucleus Cipher Operators in various departments / divisions. The present incumbents of Cipher Inspector in scale Rs.6500-10500 and Cipher Inspector/Gr.I in scale of Rs.5000-8000 may also apply for the said post."

6. The petitioner has stated that the post of Cipher Operator and Inspector were always treated as cadre posts by Southern Railway as seen from the Proceedings CPO/MAS Letter No.P(C) -524 /General/29/Vcolume VI, dated 22.09.84 & P(S) 135/IX/155/Volume V, dated 05.12.1985 and that the promotion of the petitioner herein to the different cadres was approved by the second respondent and as such, he was not holding any ex-cadre post, as stated by the second respondent in the counter filed before the Tribunal.

7. The petitioner herein has challenged the proceedings, dated 24.11.1999 issued by the second respondent as arbitrary and against law and sought a direction to quash the impugned order before the Tribunal.

8. Considering the facts and circumstances, based on the materials available on record, the Tribunal held that the petitioner's deputation from other department and also the special pay given to him and his lien in his parental department would be sufficient to decide that he was appointed only in ex-cadre post. On the above findings, the Tribunal held that the impugned order passed by the second respondent is valid and accordingly, the Original Application filed by the petitioner herein has been dismissed by the Tribunal.

9. Mr.P.V.S.Giridhar, learned counsel appearing for the petitioner contended that the petitioner was originally selected and appointed to the post of Cipher Operator Gr.II and promoted to Cipher Operator Gr.I and hence, he was subsequently, promoted to the post Cipher Inspector, after

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following due process of selection in 1991. According to the learned counsel for the petitioner, in the aforesaid orders of promotion, the second respondent has not mentioned anything that the petitioner was promoted to any ex-cadre post and hence, the finding of the Tribunal that the post in the Cipher Organisation as ex-cadre post is erroneous in law. It was further contended that demoting the petitioner to the lower post of Cipher Operator Gr.II is unreasonable and the same would result in travesty of justice.

10. The next contention raised on behalf of the petitioner is that the petitioner having been a part of Crypto organization from 1987 and successively promoted to the next two higher post, discharging his duties and responsibility in a diligent manner and having acquired sufficient knowledge and skill by the experience, ought to be absorbed in the post of Cipher Inspector, instead of undergoing a fresh process of selection. According to the petitioner, directing him to undergo the process of selection to a post two cadres below his present post would amount to reduction in rank and violation of principles of natural justice.

11. In support of his contention, the learned counsel for the petitioner cited the decision T.Shantharam vs. State of Karnataka, reported in AIR 1995 SCC 1123. As per the facts of the decision referred to, the appellant in that case had been appointed in the Revenue Department as Second Division Clerk in Mangalore in the year 1963, subsequently, sent on deputation to Food and Civil Supplies Department, which was then part of Revenue Department as Assistant Civil Supplies Inspector in the year 1967 and was subsequently promoted as Second Grade Civil Supplies Inspector in the year 1968, which is stated to be equivalent to the cadre of Sheristedar. The fifth respondent in the aforesaid case was appointed as Second Division Clerk in the year 1965 in the Food wing of the Revenue Department, thereafter, he was regularized as Second Division Clerk in 1971 and was promoted as a Sheristedar in1982. When the said appellant therein was sought to be repatriated, he filed Application No.6432/86 before the Administrative Tribunal, Bangalore. The Tribunal directed to absorb the said appellant in the Food Department, since he had been working in the Food and Civil Supplied Department, since 1966 for about 32 years and he was not given any pro forma promotion in the Revenue Department. The verdict of the Administrative Tribunal, Bangalore was taken into consideration and the appellant was accordingly absorbed and then, he was also promoted as Assistant Director on Jan 1, 1980 above the fifth respondent therein. When the matter was brought in Civil Appeal No.922 of 1995, the Hon'ble Supreme Court upheld the decision of the Administrative Tribunal that the appellant therein was entitled to get absorption in the Civil Service Department, as per the order of the Government. The Hon'ble Apex Court in this regard has held as follows :

> " The direction given by the Tribunal at the instance of 5th respondent in the impugned order, dated July 10, 1994 is accordingly set aside and the order issued in the earlier proceedings stands confirmed. In

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consequence the order of absorption and the promotion given to the appellant stand upheld."

12. It is clear that in the aforesaid decision, the only question that involved for consideration is of 'interse seniority' between the appellant and the fifth respondent therein, before the Apex Court and further, it is seen that the State of Karnataka had promoted the appellant therein, pursuant to the order of the Administrative Tribunal, Bangalore. But in the instant case, the facts and question of law involved are certainly different and therefore, in our considered view, the aforesaid decision is not applicable for deciding the issues involved in this writ petition.

13. In the decision Indian Drugs & Pharmaceuticals Ltd., vs. Workmen, reported in 2007 (1) SCC 408, the Hon'ble Apex Court has held at page No.419 as follows :

"We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies.

The Hon'ble Apex Court further observed as under:

Although the Supreme Court would be very happy if everybody in the country is given a suitable job, the fact remains that in the present state of our country's economy the number of jobs is limited. Hence, everybody cannot be given a job, despite the Supreme Court's earnest desire."

14. In the light of the decision rendered by the Hon'ble Apex Court, it is quite clear that the issues involved in the writ petition has to be decided on legal principles and not on the basis of emotions and sympathies.

15. It is an admitted fact that the petitioner was appointed as Junior Clerk and subsequently, promoted as Senior Clerk in the Southern Railway and that there was no post of Nucleus Cipher Operator, which is a feeder category to the post of Cipher Operator Gr.II.

16. As per the findings of the Tribunal, the respondents 1 to 3 had produced the seniority list of Nucleus Cipher Operator on 12.03.1998, whereby it could be seen that all those employees had come from various departments, on the basis of selection, pursuant to the notification issued from time to time. Since the staff were deputed from various departments, they were also given Special Pay, as they were holding ex-cadre posts in the Cipher Department. Similarly, it is not in dispute that though the petitioner was appointed as Cipher Operator Gr.II and then promoted as Cipher Operator Gr.I, he has retained his lien in his parent department and was also getting the benefit of promotion, though on pro

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forma basis.

17. It is not in dispute that the petitioner herein was selected as Chief Clerk, as per the Proceedings, dated 26.07.1994 in his parent department. After he was empanelled for the post of Chief Clerk, the post is re-designated as Office Superintendent Gr.II, but the petitioner had made a representation on 01.03.1995, stating that he was holding the post of Cipher Inspector and also drawing a Special Pay and as such his name should be considered for further promotion in his parent department.

18. As contended by the learned counsel for the respondents from the aforesaid circumstances, it is clear that the petitioner herein has retained his lien in his parent department. As stated by the respondents in the reply statement, the petitioner was promoted as Head Clerk and subsequently appeared for the selection for the post of Officer Superintendent Gr.II and promoted as Office Superintendent Gr.II on pro forma basis from 01.08.1995 on par with his junior Sethuraman in his parent department, but he was allowed to continue to work as Cipher Inspector in the ex-cadre post.

19. Considering the materials available on record, we are of the considered view that the aforesaid finding of the Tribunal is only based on the materials available on record. It is also not in dispute that after his appointment as Cipher Inspector, the petitioner has again represented to the contesting respondents that his increment has been withheld, though his pay was refixed in his parent department and that he wanted the said anomaly to be rectified. The petitioner was also given Special Pay, in view of the deputation. It is also not a disputed fact that while working as Cipher Operator, the petitioner herein had sought permission to write the examination for promotion as Chief Clerk in his parent department.

20. Considering the above circumstances, the Tribunal has held that the post of Cipher Operator Gr.II, Gr.I and Cipher Inspector are all ex-cadre post and that the petitioner herein after knowing fully that he was holding only ex-cadre post has volunteered for being selected in his parental department. It is also not in dispute that the post of Cipher Operator Gr.II is not a promotional post from clerical cadre and that the post of Cipher Operator is only outside the cadre. As candidates from different department, having different qualifications and experience were taken into consideration for filling up the post in Cipher Department, it is a clear circumstance to hold the same only as ex-cadre post.

21. Considering the undisputed factual aspects, we are of the view that in the Southern Railway, there was no feeder category to the Cipher Department. It is not disputed by the petitioner that he has been paid Special Pay, while holding the post in the Cipher Department. If it is a cadre post, as claimed by the petitioner and got promotion based on the cadre post, he would not have been paid the Special Pay. As per the findings, based on the documents produced before the Tribunal, it has been

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held that the same would conclusively show that the petitioner has been working only in the ex-cadre post. Therefore, having found no error in the impugned order, we are of the considered view to uphold the finding of the Tribunal that the post being held by the petitioner in the Cipher Department is only an ex-cadre post.

22. As discussed earlier, we are of the clear view of concurring the finding of the Administrative Tribunal that the petitioner cannot acquire a lien outside the cadre, to which he was appointed and while continuing the said lien in his parent department, since as per service jurisprudence, no one can have lien in two different cadres at the same time.

23. It is an admitted fact that the petitioner is having a lien with his parent department, which has not been severed and therefore, he cannot claim a similar lien in Cipher Department. In order to quash the proceedings of the respondents, there should be patent illegality in the impugned order. As held by the Administrative Tribunal, it is well settled that when the employer intends to create a cadre , it has to be considered as a policy decision and merely because of some of the employees working therein are likely to be affected, it cannot be considered the policy decision as illegal. As the service conditions of the petitioner is not affected and his lien is still continuing in his parent department, we cannot hold that the order passed by the respondents as arbitrary or against law.

24. As held by the Hon'ble Apex Court in the decision Indian Drugs & Pharmaceuticals Ltd., vs. Workmen, reported in 2007 (1) SCC 408, under Article 226 of the Constitution, this Court has to consider the impugned order on the basis of legal principles and not on emotions and sympathies.

25. It has been established that the lien of the petitioner is still continuing in his parent department, based on which, he has been drawing the Special Pay. While working as Cipher Inspector, he has even attended for the selection of post of Chief Clerk in his parent department and was also selected, in view of his lien in his parent department. Similarly, he moved a representation that he should be considered for pro forma promotion as Office Superintendent Gr.II and his request has also been considered and an office order has been issued promoting him as Office Superintendent Gr.II on pro forma basis in his parent department, on par with his junior. Therefore, it is quite clear that the petitioner has been holding only an ex-cadre post and not a cadre post in the Cipher Department.

26. On the aforesaid facts and circumstances, we could find no error or infirmity in the impugned order passed by the Administrative Tribunal, which would warrant interference of this Court under Article 226 of the Constitution.

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27. In the result, the writ petition fails and accordingly, the same is dismissed. No order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

tsvn

To

1. The Secretary
   Union of India
   Ministry of Railways, New Delhi.

2. The Chief Personnel Officer
   Southern Railways,
   Head Quarters Office, Chennai - 600 003.

3. The Deputy Chief Personnel Officer
   (Engineering).
   Southern Railways,
   Head Quarters Office,
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4. The Registrar
   Central Administrative Tribunal
   Madras Bench,
   High Court Campus, Chennai.

+ 1 CC To Mr. M.Vellaisamy, Advocate SR NO.57939

+ 1 CC To Mr. P.V.S.Giridhar, Advocate SR NO.57539

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